

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of Part 15 and Other Parts)	ET Docket 01-278
of the Commission's Rules)	RM-9375
)	RM-10051
)	
Petition for Waiver of Section 15.37(k))	File No:
of the Commission's Rules)	
)	

OPPOSITION TO "PETITION FOR WAIVER ON BEHALF OF RADIOSHACK"

Richard DalBello
President
SATELLITE INDUSTRY ASSOCIATION
225 Reinekers Lane
Suite 600
Alexandria, VA 22314
(703) 739-8357

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION SHOULD DISMISS RADIOSHACK’S WAIVER REQUEST AS PROCEDURALLY DEFICIENT	6
III. RADIOSHACK FAILS TO MEET THE WAIVER STANDARD	8
A. RadioShack has not demonstrated special circumstances that warrant a waiver.	9
B. The public interest would not be served by grant of the <i>Waiver</i> <i>Request</i>.	14
C. Grant of the <i>Waiver Request</i> would undermine the Commission’s rules.	17
IV. RADIOSHACK’S RADAR DETECTORS ARE WHOLLY NON-PART-15-COMPLIANT	21
V. COMMISSION PRECEDENT SUPPORTS THE CURRENT COMPLIANCE SCHEDULE	23
VI. CONCLUSION.....	27

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The Satellite Industry Association ("SIA")¹ hereby opposes the Petition for Waiver on Behalf of RadioShack,² in which RadioShack Corporation ("*RadioShack*") requests an extension, until March 30, 2003, of the requirement that it comply with Section 15.37(k), which mandates that radar detectors marketed after September 27, 2002 comply with Part 15 limits on radiofrequency emissions in order to prevent harmful interference into licensed satellite services.³

I. INTRODUCTION AND SUMMARY

RadioShack did not participate in this proceeding prior to the filing of its *Waiver Request*. It did not have the manufacturer(s) of the radar detectors that it sells present

¹ SIA's Executive Members are: The Boeing Company; Globalstar, L.P.; Hughes Electronics Corp.; ICO Global Communications; Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; PanAmSat Corporation; SES Americom, Inc.; Teledesic Corporation; and TRW Inc. Inmarsat participates in SIA as a non-voting Associate Member.

² Petition for Waiver on Behalf of RadioShack, ET Docket No. 01-278, RM-9375, RM-10051 (filed August 13, 2002) (the "*Waiver Request*").

³ *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, First Report and Order, FCC 02-211 (rel. July 19, 2002) ("*First Report and Order*").

RadioShack's views to the Commission. And RadioShack has sold, and continues to sell, non-Part 15-compliant radar detectors that emit levels of signals that have been conclusively shown to disrupt the provision of reliable communications and information to the medical profession, law enforcement, schools and other entities, and that have threatened the loss of control of in-orbit spacecraft.⁴ Moreover, RadioShack admits that it has ordered large amounts of its current inventory during the pendency of this proceeding.⁵

Every retailer, wholesaler, and other marketer of new, used and refurbished radar detectors in the U.S. must comply with the new Part 15 rules that prohibit marketing non-compliant radar detectors after September 27, 2002. RadioShack pleads that it is different, and it effectively asks that the Commission hold new Section 15.37(k) in abeyance only for RadioShack for a six month period so that RadioShack can sell *at least 100,000* radar detectors that do not comply with Part 15.⁶ RadioShack does not dispute the Commission's conclusion that non-compliant radar detectors cause harmful interference to satellite operations in the 11.7-12.2 GHz band,⁷ nor does it challenge the emissions levels or other Part 2 and 15 rules to which radar detectors are now subject. RadioShack further submits its own analyses demonstrating that RadioShack's radar detectors substantially exceed the Commission's Part 15 emissions limits – which in and of themselves are more than five times higher than the emissions levels that the

⁴ SIA *ex parte* submission filed in ET Docket No. 01-278 on August 22, 2002.

⁵ *Waiver Request* at 6.

⁶ *Waiver Request* at 5. As noted below, it is not clear from RadioShack's filing how many non-compliant radar detectors (above 100,000) it actually seeks to sell. *See infra* p. 15.

⁷ *First Report and Order* at ¶ 10.

satellite industry conclusively showed cause harmful interference into satellite earth terminal receivers.⁸

For the following reasons, the Commission should dismiss or deny RadioShack's waiver request and thereby affirm the application *to all retailers and other marketers*, effective September 27, 2002, of the prohibition on marketing non-compliant radar detectors in the United States. First, holding the Commission's new rule in abeyance so RadioShack can continue selling non-compliant radar detectors would reward a company who did not participate earlier in this proceeding, and who has offered no reason whatsoever for sleeping on its rights. Second, RadioShack presents no special circumstances that warrant the requested relief. Third, the uncontested record evidence of the long-term harm that non-compliant radar detectors cause to users and providers of satellite services far outweighs the short-term costs associated with requiring that RadioShack comply with the same new rules to which everyone else is subject. Fourth, granting a waiver would undermine the purpose of the rule that the Commission just adopted and would open the floodgates to similar claims for relief by other entities. Fifth, each radar detector for which RadioShack seeks relief produces emissions well in excess of the level permitted by Part 15, and at a level that has been shown to cause harmful interference into satellite services. Sixth, the compliance schedule that the Commission has adopted in this case is warranted by the harmful interference created by non-compliant radar detectors and is consistent with the compliance schedule the Commission has adopted in a similar case.

In considering RadioShack's waiver request, SIA urges the Commission to keep in mind that the *First Report and Order* is a delicate compromise that does not provide the full

⁸ See SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002.

relief sought by any party who participated in this proceeding. There were four main issues to be resolved in the Commission's decision to regulate radar detectors: (i) the frequency bands in which radar detector emissions would be expressly limited, (ii) the limit of radar detector emissions in those bands, (iii) how to handle non-compliant radar detectors that are already in circulation, and (iv) when the new rules would apply. The satellite industry prevailed on only one of these four issues---the very one that RadioShack seeks to upset in its *Waiver Request*.

(i) Frequency Bands. The radar detector industry advocated limiting emissions only in the 11.7-12.2 GHz band.⁹ Satellite proponents requested that the limits apply across the 10.7-12.7 GHz band.¹⁰ The Commission adopted specific emissions limits only in the 11.7-12.2 GHz band.¹¹

(ii) Emission Levels. The radar detector industry advocated the adoption of the 500 microvolt limit generally applicable to "Class B" devices.¹² The satellite industry demonstrated that satellite services receive harmful interference from radar detectors generating signals above 85 microvolts/meter, measured at 3 meters.¹³ The Commission adopted a 500 microvolt limit.

(iii) Recall. The Satellite Industry Association and other companies in the satellite industry urged the recall of all non-compliant radar detectors already sold or on the

⁹ RADAR Comments at 2.

¹⁰ SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002 at 2.

¹¹ The Commission also warned radar detector manufacturers of their obligation to "use good engineering practice in the design of their equipment and suppress emissions as much as practicable." *First Report and Order* at ¶ 14 (citing 47 C.F.R. § 15.15(a)).

¹² RADAR Comments at 2.

¹³ SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002 at 2.

market.¹⁴ Instead, the Commission adopted rules that govern the manufacture and marketing of radar detectors on a going-forward basis.

(iv) Timing. The radar detector industry asked to be allowed to manufacture non-compliant radar detectors until June 30, 2003, and to sell non-compliant devices in perpetuity.¹⁵ RADAR represented to the Commission that 73% of radar detectors being manufactured as of a few month ago were FCC-compliant and that all devices manufactured by its members would be compliant after January 2003.¹⁶ The satellite industry asked that the Commission make its rules effective immediately.¹⁷ The Commission decided that its emissions limits would apply to all radar detectors manufactured after August 28, 2002, and all radar detectors marketed and sold after September 27, 2002.

The Commission's timely action in this proceeding promises to prevent the saturation of the U.S. market with non-compliant radar detectors that otherwise would be sold during the upcoming holiday season and would remain in operation for years to come.¹⁸ RadioShack's request that the Commission hold in abeyance the application of the marketing deadline to RadioShack would undercut an essential element of an overall compromise solution that the Commission adopted to solve an egregious interference problem.

RadioShack's attempt to disrupt the careful compromise inherent in the *First Report and Order* is particularly outrageous because RadioShack did not avail itself of the opportunity to participate earlier in this proceeding. RadioShack filed this waiver request just

¹⁴ Starband/Spacenet Comments at 14; SIA Reply Comments at 6.

¹⁵ RADAR *ex parte* submission in ET Docket No. 01-278 on June 11, 2002.

¹⁶ *Id.*

¹⁷ SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002 at 2.

after the ink had dried on the *First Report and Order*, and RadioShack has just now presented technical information about its radar detectors, as well as information about its distribution and sales cycles, that could have been submitted before the Commission reached a decision in this proceeding. Thus, RadioShack has effectively sought reconsideration in a proceeding in which it failed to participate on a timely basis, and for which it has provided no reason for its tardiness.

Grant of RadioShack's waiver request would facilitate the introduction of at least 100,000 new sources of harmful interference, which will be capable of disrupting licensed satellite services for years to come. This long-term threat stands in stark contrast to the short-term financial impact of RadioShack's complying with the new rules. For these reasons, and the fact that RadioShack's own testing shows that each of the radar detectors it now sells produces emissions well in excess of the Part 15 limits, there is no valid basis for its waiver request.

II. THE COMMISSION SHOULD DISMISS RADIOSHACK'S WAIVER REQUEST AS PROCEDURALLY DEFICIENT

As an initial matter, RadioShack's submission is essentially a petition for reconsideration in the guise of a petition for waiver. RadioShack does not assert that it can partially comply with the Commission's new rules, or that its products comply with the spirit but not the letter of the new rules. Rather, RadioShack comes forth just two weeks after Federal Register of the *First Report and Order* with detailed technical analyses about the interference potential of its radar detectors, and a host of information about its distribution and retail cycles. RadioShack asks that the Commission hold its new rule in abeyance for six months, only as to RadioShack, so that RadioShack can continue to sell radar detectors that: (i) emit signals at a level that has been demonstrated to cause harmful interference into licensed satellite services,

¹⁸ See Hughes Network Systems ("HNS") Reply Comments at 5-6.

(ii) do not even come close to complying with Part 15, and (iii) exceed by an even greater margin the emissions limit that the satellite industry has demonstrated is necessary to protect licensed satellites services from interference caused by unlicensed radar detectors, which operate on a secondary, non-interference basis.

The Commission has established, both in its rules and decisions, that facts and events known to the parties during a proceeding cannot be raised later as the grounds for reconsideration.¹⁹ The Commission has dismissed reconsideration petitions for this very reason.²⁰ RadioShack cannot seriously contend that it could not have known what was happening in this proceeding.²¹ The whole point of this proceeding was whether and how the manufacture, import and sale of radar detectors should be regulated. And Section 302(b) of the Communications Act is explicitly clear that RadioShack's sale of electronics is regulated: "No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems" that do not comply with Commission regulations.

RadioShack has been given more than adequate notice and ample opportunity to submit information into the record regarding its distribution and retail cycles. Ignorance of the pendency of this proceeding is no excuse. And RadioShack's claim that the NPRM "did not

¹⁹ 47 C.F.R. § 1.429(b); *see, e.g., Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order, FCC 02-130 at ¶¶ 18-20 (rel. May 8, 2002); *Implementation of the AM Expanded Band Allotment Plan*, Memorandum Opinion and Order, 13 FCC Rcd 21872 at ¶ 7 (1998).

²⁰ *See, e.g., Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order, FCC 02-130 (rel. May 8, 2002); *Implementation of the AM Expanded Band Allotment Plan*, Memorandum Opinion and Order, 13 FCC Rcd 21872 (1998).

²¹ Furthermore, the popular press was covering the FCC's deliberations. *See, e.g., USA Today*, June 17, 2002, B1, "New radar detectors zing small satellite systems"; *Computerworld*, May 13, 2002, "Radar Detectors Zap Credit Card Transactions at Pump."

address issues relating to proposed implementation schedules”²² is belied by the *express language* of the October 2001 NPRM seeking comment “especially from small entities, concerning the timeframe that should be required to comply with any new emission limits.”²³

RadioShack laments that nothing has been submitted in the record about retail and marketing cycles and that neither it nor any other retailer was a party to this proceeding prior to the Commission’s decision.²⁴ But that it is not the fault of the Commission, or of the satellite industry, which has suffered for years from harmful interference emitted by radar detectors that are being operated in violation of Part 15.²⁵ There was a full debate on the record about the timeframe that should be adopted for compliance with the new Part 15 rules. No excuse has been provided as to why the retail industry failed to raise these issues in a timely fashion, and failed to participate in this proceeding at an earlier stage. This is reason enough for the Commission to summarily dismiss the RadioShack *Waiver Request*.

III. RADIOSHACK FAILS TO MEET THE WAIVER STANDARD

RadioShack simply does not meet the “good cause” standard for grant of a waiver. Under this standard, a waiver request must demonstrate that “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”²⁶ As demonstrated below, RadioShack utterly fails to make this showing. Further, grant of

²² *Waiver Petition* at 9.

²³ *Notice of Proposed Rule Making and Order* in ET Docket No. 01-278, 16 FCC Rcd 18205 ¶ 14 (2001).

²⁴ *Waiver Petition* at 3, 7.

²⁵ See 47 CFR §15.5.

²⁶ *Northeast Cellular Telephone Co. v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

RadioShack's waiver would compromise the fundamental purpose of the newly-adopted Commission rule.²⁷

A. RadioShack has not demonstrated special circumstances that warrant a waiver.

RadioShack claims that it has special circumstances that distinguish its case from that of other marketers of radar detectors. Specifically, RadioShack demonstrates that all radar detectors it currently sells are non-compliant (admitting that it purchased most of its stock in the first quarter of 2002, during the pendency of this proceeding).²⁸ It asserts that shipment of orders and delivery to its retail outlets takes a total of six months.²⁹ RadioShack cites its status as a primarily private label retailer as an additional hardship, explaining that compliant radar detectors have not yet been made available to it for private label sale.³⁰ And RadioShack bemoans that there is no way to get a refund from its foreign manufacturer for its inventory and that it is against company policy to sell its current inventory overseas.³¹

As an initial matter, all retail business operations will bear some, and possibly different, burdens of complying with the new rules prohibiting the marketing of non-compliant radar detectors. The Commission acknowledged in the Order that there are some logistical issues and costs in complying.³² This alone is not news or the basis for a waiver. If it were, the Commission could never implement rule changes on an expedited basis.

²⁷ See *Wait Radio*, 418 F.2d at 1157; *Midwest Communications, Inc. v. FCC*, 7 FCC Rcd 159, 160 (1991).

²⁸ *Waiver Request* at 6, 12.

²⁹ *Waiver Request* at 5-7.

³⁰ *Waiver Request* at 9.

³¹ *Waiver Request* at 7-8.

³² See *First Report and Order* at ¶ 17.

The fact that all of RadioShack's radar detector stock is non-compliant is not a valid basis for a waiver. RadioShack states that it "placed orders for a substantial portion of this inventory during the first quarter of 2002,"³³ and does not indicate whether the rest was ordered in the second quarter of 2002. RadioShack has no legitimate claim that it relied on a rule that was subject to change in a pending rulemaking. It is axiomatic that parties who gamble on the outcome of a rule that is the subject of a rulemaking proceeding cannot be heard to claim detrimental reliance on the *status quo ante*.³⁴

RadioShack's complaint that it needs six months' lead time to restock its stores similarly fails as a basis for a waiver. Three months of this asserted lead time is attributable to the lead time required by an unidentified radar detector manufacturer,³⁵ (i) who may well have participated in this proceeding and should have been aware, in any event, of the need to ramp up production of compliant products, and (ii) who, based on assertions by RADAR in this proceeding, may well already be manufacturing over 80% of its products to be compliant with Part 15.³⁶

RadioShack attributes another 75-90 days of delay to shipping times.³⁷ Shipping times are hardly a circumstance unique to RadioShack. In a world where UPS, Federal Express and similar services are the delivery means of choice for countless businesses and consumers, it

³³ *Waiver Request* at 6.

³⁴ *See, generally, Cassell v. FCC*, 154 F.3d 478 (D.C. Cir. 1998).

³⁵ *Waiver Request* at 6.

³⁶ *See* RADAR *ex parte* submission filed in ET Docket No. 01-278 on August 12, 2002 at 2. Thus, it is not clear why this manufacturer cannot, as RadioShack claims, deliver compliant radar detectors until January 2002. *Waiver Request* at 5. Even if this were the case, there are other sources of compliant radar detectors. *See infra* pp. 11-12.

³⁷ *Waiver Request* at 6.

is incredible to suggest that RadioShack, a company with almost \$5 billion in sales last year, cannot expedite the shipment and distribution of a product that it claims its customers want to buy, and it wants to sell, during the upcoming holiday sales season. In any event, RadioShack will have had 70 days alone, from the release of the *First Report and Order* to the September 27 compliance deadline, to make appropriate arrangements with radar detector manufacturers and shipping companies, and with its advertisers.³⁸

RadioShack invokes its status as the only private-label retailer of radar detectors in the United States.³⁹ This is a distinction without a difference. RadioShack's observation that Part 15-compliant radar detectors being manufactured today "have not been available for private-label use"⁴⁰ begs the question whether RadioShack ever sought to buy compliant radar detectors. Moreover, it would be absurd for the Commission to allow the unwillingness of a radar detector manufacturer to sell compliant devices to serve as an excuse for the continued sale of that manufacturer's non-compliant devices, which have been shown to cause harmful interference. In any event, this alleged special circumstance is simply a matter of contract between manufacturers and retailers who now have no choice but to comply with Part 15 rules. In other words, the *First Report and Order* rightly places the burden on RadioShack and other retailers to work with radar detector manufacturers to obtain access to adequate supplies of compliant radar detectors.

RadioShack's emphasis that its problems are caused by a need to sell goods under its own private label is contradicted by the way that RadioShack conducts business today. A quick search of the radioshack.com web site reveals that RadioShack currently sells RCA-

³⁸ *Cf. Waiver Request* at 2-3, 5-7 & n.8.

³⁹ *Waiver Request* at 5, 9-10.

⁴⁰ *Waiver Request* at 9.

branded TVs, Panasonic and Samsung camcorders, RCA, GE, and Go-Video DVD players, Texas Instruments calculators, Palm Pilot PDAs, Nokia and Motorola phones, and Compaq computers, among other name-brand goods. That same web site touts the marketing of Sprint and Verizon phone service. Considering that (i) RADAR has represented that 80% of radar detectors manufactured today are Part 15 complaint⁴¹ and (ii) SIA has presented evidence that *Part 15-compliant* devices manufactured by each of Cobra, BelTronics, and Whistler are available on the market today,⁴² there is no good reason that RadioShack could not sell widely-available, name-brand, Part-15 compliant radar detectors.

Buying any of the large numbers of currently-produced compliant radar detectors would solve a number of problems that RadioShack cites as a basis for a waiver: (i) it would allow RadioShack to stock its stores, meet the needs of its customers, and provide a way for RadioShack employees to earn the sales commissions that it claims may be lost as a result of the September 27 deadline,⁴³ and (ii) it would solve RadioShack's complaint that its current manufacturer did not adequately anticipate the need to retool to produce compliant radar

⁴¹ RADAR *ex parte* submission filed in ET Docket No. 01-278 on August 12, 2002 at 2.

⁴² SIA *ex parte* submission filed in ET Docket No. 01-278 on August 19, 2002 at attachment, "Summary of Radar Detector Emission Measurements."

⁴³ *Waiver Request* at 5, 7-9, 17.

There are at least four flaws with RadioShack's argument that no *U.S.* manufacturer of radar detectors appears to be able to supply RadioShack with the volume needed for RadioShack's 7,200 stores. *Waiver Request* at 7, n. 12. First, there is no support for this claim. Second, it appears to contradict RADAR's assertion that its members will make available over 400,000 compliant radar detectors in the last four months of 2002 alone. RADAR *ex parte* submission in ET Docket No. 01-278 on August 12, 2002 at 3. Third, it begs the question whether *foreign* manufacturers of radar detectors can supply RadioShack. BelTronics of Ontario, Canada is one manufacturer of popular (compliant and non-compliant) radar detectors. Fourth, RadioShack's failure to participate in this proceeding and anticipate the outcome has exacerbated this asserted problem.

detectors.⁴⁴ Finally, RadioShack insists that, without a waiver it will need to create a “fire sale” of remaining inventory, that it cannot get a refund from its manufacturers, and that it will not compromise its brand name by “dumping” its inventory abroad.⁴⁵ These arguments also fail. RadioShack has already started its “fire sale”---it has reduced retail prices of its current radar detectors by up to 50%.⁴⁶ And the fact that RadioShack made a bad business deal that prevents it from returning non-FCC-compliant radar detectors is a contract matter, and no one’s fault but RadioShack’s. RadioShack, by its own account, is the world’s largest electronics chain.⁴⁷ It seems certain, therefore, that RadioShack would have considerable negotiating leverage with radar detector manufacturers. Moreover, it also would seem commercially feasible, notwithstanding company policy, for RadioShack to sell its non-compliant devices overseas, or to have them repackaged and sold overseas under its foreign brand, Tandy, or another name.⁴⁸ Thus, it is laughable for RadioShack to claim that it is disproportionately harmed by the September 27, 2002 compliance deadline because it is not a “mom and pop” retailer.⁴⁹

In short, RadioShack has assumed the risk of ordering its inventory during the pendency of this rulemaking proceeding. And, in any event, there are plenty of ways for RadioShack to mitigate its potential losses.

⁴⁴ *Waiver Request* at 5.

⁴⁵ *Waiver Request* at 7-8.

⁴⁶ On August 23, 2002, the radioshack.com site listed four radar detectors for sale: Originally priced at \$199.99, \$179.99, \$149.99, and \$99.99, these units are now on sale for \$149.99, \$99.99, \$99.99, and \$49.99, respectively. *See* Exhibit A.

⁴⁷ *See Tandy's Money Machine - How Charles Tandy Built RadioShack Into the World's Largest Electronics Chain*, by Irvin Farman (The Mobium Press, Chicago, 1992), cited with approval on the radioshack.com web site at <http://www.radioshackcorporation.com/about/factsheet.shtml>.

⁴⁸ *Cf. Waiver Request* at 8 (asserting need to protect brand name).

⁴⁹ *Waiver Request* at 10.

B. The public interest would not be served by grant of the *Waiver Request*.

RadioShack claims that grant of its *Waiver Request* would serve the public interest by “avoiding significant harm to the operation of a major retailer.”⁵⁰ RadioShack attempts to garner sympathy by describing the possibility that it would be “at least temporarily, if not permanently, out of the business of selling radar detectors,” causing the retailer significant and “unnecessary economic loss . . . at a time of economic uncertainty at the national level.”⁵¹ RadioShack further alleges that its employees will suffer because they work on a partial commission basis, and may not have any radar detectors to sell.⁵²

These claims are specious. First, as described above, there does not appear to be any reason that RadioShack cannot obtain and sell the 80% of radar detectors being manufactured today that are fully Part 15 compliant. If RadioShack can sell Nokia and Motorola-branded phones in its stores, it surely can sell BelTronics, Cobra and Whistler radar detectors.⁵³

Second, the horrific economic losses that RadioShack alleges are impossible to square with RadioShack’s 2001 Annual Report, or with other assertions in its *Waiver Request*. RadioShack does not provide precise figures, but it estimates that the impact of the *First Report and Order* would preclude several million dollars in sales of radar detectors in its stores. As noted above, it is reasonable to conclude that these sales need not be lost, because RadioShack could sell compliant devices. But even assuming for the sake of argument that RadioShack is

⁵⁰ *Id.* at 16.

⁵¹ *Id.* at 16-17.

⁵² *Id.* at 9, 17.

⁵³ *See supra* pp. 11-12.

right,⁵⁴ and assuming a gross profit margin of 48%,⁵⁵ the net effect of losing the ability to sell 100,000 radar detectors is a lost profit in the range of \$1.5-2 million.⁵⁶ In the context of a corporation with 2001 total net sales of \$4.8 billion and 2001 gross profit of \$2.3 billion,⁵⁷ the loss of \$1.5-2 million in profits hardly seems significant. This is particularly true when weighed against the record evidence of the overwhelming and long-term harm caused by the past and future operation of non-compliant radar detectors, and the injuries that non-compliant radar detectors impose on the millions of businesses and consumers who rely on satellite services every day.⁵⁸

RadioShack tries to assure the Commission by stating that granting the *Waiver Request* would allow only the sale of non-compliant inventory that was ordered and manufactured prior to July 29, 2002,⁵⁹ the date of Federal Register publication of the *First Report and Order*, and 10 days after the release of the *First Report and Order*. RadioShack does not indicate precisely how many radar detectors this involves—it simply says “more than 100,000,”⁶⁰ —so we do not know if the number is 200,000, 500,000 or 1,000,000, or more. RadioShack specifically pleads with the Commission to waive the current deadline so that it can sell all of its non-compliant inventory in the U.S. marketplace through the holiday season.⁶¹

⁵⁴ *Waiver Petition* at 8.

⁵⁵ RadioShack Corporation Annual Report, SEC Form 10-K (filed March 29, 2002).

⁵⁶ 48% of \$3-4 million in lost sales is about \$1.5-2.0 million.

⁵⁷ RadioShack Corporation Annual Report, SEC Form 10-K (filed March 29, 2002).

⁵⁸ See, e.g., SIA *ex parte* submission filed in ET Docket No. 01-278 on August 22, 2002.

⁵⁹ *Waiver Request* at 2, 4.

⁶⁰ *Waiver Request* at 5.

⁶¹ *Waiver Request* at 17.

What RadioShack fails to address is that radar detectors, like many other consumer devices, are used for many years, and they are sold and resold in secondary markets such as e-bay.⁶² Thus, grant of the proposed waiver is not a short-term, six-month consequence--granting the requested relief would have long-term effects because it would facilitate the disruption of satellite services for many years to come. And as the satellite industry previously has explained, once radar detectors enter the hands of consumers, there is no effective way for the Commission to enforce the non-interference provisions of Part 15, to which radar detectors always have been subject.⁶³

Thus, the net effect of allowing RadioShack to empty its retail pipeline would be to facilitate the continued deployment of non-compliant unlicensed devices that conclusively have been shown to cause interference to licensed services, and over which the Commission has no effective control once the devices are sold. Thus, granting the *Waiver Request* would expressly sanction the continued creation of debilitating interference into licensed users of the radio spectrum. And after RadioShack has sold at least 100,000 interfering devices, its promise to inform customers about the availability of new, compliant devices,⁶⁴ would be a meaningless gesture----those devices will likely be kept in operation for years to come, whether by their

⁶² HNS Reply Comments at 5-6; *see also*, Exhibit B hereto (examples of used RadioShack radar detectors available for purchase on e-bay on August 23, 2003).

Comparing RadioShack's estimate that 25 million radar detectors are already in the marketplace, *Waiver Request* at 17-18, with RADAR's assertion that its members, who account for at least 85% of radar detectors sold in the U.S., sell 1.5 million units a year, RADAR *ex parte* submission filed in ET Docket 01-278 on August 12, 2002 at 1, confirms that these units are kept in use for at least 5 years after they are purchased, and maybe far longer.

⁶³ 47 C.F.R. § 15.5.

⁶⁴ *Waiver Request* at 18.

original owners, or by purchasers in secondary markets.⁶⁵ RadioShack's proposed expenditure would be far more effective if it were used for advertising targeted at educating consumers about the need to buy a compliant radar detector *in the first place*.

Under Section 301 of the Communications Act, the Commission has a clear responsibility to maintain control over channels of radio transmissions. The Commission must not abdicate that responsibility by allowing RadioShack to continue to sell non-compliant radar detectors after September 27, 2002.

In sum, the Commission implemented the September 27, 2002 radar detector marketing compliance deadline because of a demonstrated and uncontroverted interference problem. The purpose of the Commission's carefully rendered decision is to protect licensed satellite operations in the 11.7-12.2 GHz band. The Commission should not now break with precedent and its own rules by granting relief (i) based on facts that could have been, but were not, raised during the comment period of this proceeding, and (ii) which would not advance the public interest in any event. Given the totality of the circumstances, it is entirely appropriate for RadioShack and other manufacturers and retailers to carry their part of the burden associated with non-complaint radar detectors.

C. Grant of the *Waiver Request* would undermine the Commission's rules.

By adopting Section 15.37(k) and the other aspects of the *First Report and Order*, the Commission has acknowledged the severity of the harm that non-compliant radar detectors pose to satellite users, service providers, manufacturers and operators nationwide. By precluding the manufacture and import of non-compliant radar detectors after August 28, 2002, and by

⁶⁵ See *supra* p. 16, n. 62.

precluding the retail sale and other marketing of non-compliant radar detectors after September 27, 2002, the Commission has taken prompt and appropriate steps to prevent the current situation from getting worse. Given the clear evidence of harmful interference caused by non-compliant radar detectors, the Commission's rules are a critical means to protect licensed satellite operations in the 11.7-12.2 GHz band. Granting a waiver to RadioShack would increase the number non-compliant radar detectors in operation and therefore would exacerbate the harm already suffered by users of satellite services.⁶⁶

As discussed further below,⁶⁷ RadioShack radar detectors are clearly non-compliant and are capable of causing harmful interference. RadioShack's intimation that its radar detectors may not cause interference, and its assertion that the effect of granting the waiver would be "practically non-existent," are simply disingenuous.⁶⁸

Moreover, granting RadioShack's requested relief would open the floodgates to requests for relief from other retailers and manufacturers, who will undoubtedly complain of their "unique" burdens in connection with complying with the *First Report and Order*. As explained above, RadioShack's circumstances are not unique; therefore, there is no reason to believe that the Commission successfully could contain the requested relief to this case.

⁶⁶ As noted above, RadioShack does not provide a firm estimate of the number of radar detectors that would be covered by this waiver request. *See supra* p. 15. And RadioShack's comparison of the scope of its inventory with the number of radar detectors currently in the marketplace is irrelevant, because RadioShack does not indicate how many units already in service are in fact Part 15-compliant. *See Waiver Request* at 17-18.

⁶⁷ *See infra* Section IV.

⁶⁸ *Waiver Request* at 11-13, 17.

As described above, RadioShack had the chance to participate earlier in this proceeding, but it did not do so.⁶⁹ RadioShack's attempt to insert itself in this proceeding at the 11th hour, with information that was available (but not provided) during the comment phase, threatens to disrupt a careful compromise already reached by the Commission.

The Order is a delicate compromise that does not provide the full relief sought by any party who participated in this proceeding. There were four main issues to be resolved in the Commission's decision to regulate radar detectors: (i) the frequency bands in which radar detector emissions would be expressly limited, (ii) the limit of radar detector emissions in those bands, (iii) how to handle non-compliant radar detectors that are already in circulation, and (iv) when the new rules would apply. The satellite industry prevailed on only one of these four issues---the very one that RadioShack seeks to upset in the *Waiver Request*.

(i) Frequency Bands. The radar detector industry advocated limiting emissions only in the 11.7-12.2 GHz band.⁷⁰ Satellite proponents requested that the limits apply across the 10.7-12.7 GHz band.⁷¹ The Commission adopted specific emissions limits only in the 11.7-12.2 GHz band.

(ii) Emission Levels. The radar detector industry advocated the adoption of the 500 microvolt limit generally applicable to "Class B" devices.⁷² The satellite industry demonstrated that satellite services receive harmful interference from radar detectors with

⁶⁹ See *supra* Section II.

⁷⁰ RADAR Comments at 2.

⁷¹ SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002 at 2.

⁷² RADAR Comments at 2.

emissions at the 85 microvolt/meter, measured at 3 meters, level.⁷³ The Commission adopted a 500 microvolt limit.

(iii) Recall. The Satellite Industry Association and other companies in the satellite industry urged the recall of all non-compliant radar detectors already sold or on the market.⁷⁴ Instead, the Commission adopted rules that govern the manufacture and marketing of radar detectors on a going-forward basis.

(iv) Timing. The radar detector industry asked to be allowed to manufacture non-compliant radar detectors until June 30, 2003, and to sell non-compliant devices in perpetuity.⁷⁵ RADAR represented to the Commission that 73% of radar detectors being manufactured as of a few month ago were FCC-compliant and that all devices manufactured by its members would be compliant after January 2003.⁷⁶ The satellite industry asked that the Commission make its rules effective immediately.⁷⁷ The Commission decided that its emissions limits would apply to all radar detectors manufactured after August 28, 2002, and all radar detectors marketed and sold after September 27, 2002.

Thus, based on the many pleadings and *ex parte* submissions in the record, the Commission struck a balance: (1) it accepted RADAR's proposal for a higher emission limit on a more limited frequency range, (2) it reminded manufacturers of their Part 15 obligation to use good engineering design and to suppress emissions as much as practicable, (3) it adopted rules that govern the manufacture and marketing of radar detectors on a going-forward basis instead of

⁷³ SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002 at 2.

⁷⁴ Starband/Spacenet Comments at 14; SIA Reply Comments at 6.

⁷⁵ RADAR *ex parte* submission filed on ET Docket No. 01-278 on June 11, 2002.

⁷⁶ *Id.*

implementing a product recall, and (4) it adopted a compliance timeframe that was close to the satellite industry's proposal, and that mitigated the chance for irreparable harm caused by the continued sale of radar detectors over the upcoming holiday season.

The Commission struck the correct balance. Allowing RadioShack to continue to sell non-compliant radar detectors would upset this balance. Moreover, the Commission should not even consider reopening the issue of the compliance timeframe without also reevaluating the very generous emissions limit it adopted and the very circumscribed frequency range to which that limit applies.

IV. RADIOSHACK'S RADAR DETECTORS ARE WHOLLY NON-PART-15-COMPLIANT

RadioShack claims that its devices have not been shown to cause interference and that its brand of radar detectors produce significantly lower emission levels than the products of other manufacturers.⁷⁸ Based on these claims, RadioShack asks the Commission to excuse it from the compliance deadline.

The problem is that, according to RadioShack's own analysis, the emissions from its devices still are half of ridiculous----they still are anywhere from 25 to 211 times the Part 15 limits and 145 to 429 times the limit recommended by the satellite industry.⁷⁹ Moreover, devices emitting at these levels have been found to interfere with satellite operations in the 11.7-12.2 GHz band. VSAT systems used by gas station operators in Red Oak, Texas and Ennis, Texas

⁷⁷ SIA *ex parte* submission filed in ET Docket No. 01-278 on May 31, 2002 at 2.

⁷⁸ *Waiver Request* at 11-13.

⁷⁹ *Waiver Request* at Appendix A. RadioShack does not indicate the relevant units with respect to the measurements of signals emitted by its devices. Specifically, RadioShack does not indicate whether its measurements were made at 1 meter, or 3 meters. If its measurements were made at 1 meter, then its devices are 25 to 70 the Part 15 limits. If its measurements were made at 3 meters, then its devices are 74 to 211 times the Part 15 limits. In either case, these devices far exceed Part 15 limits.

were rendered temporarily unusable by harmful interference caused by an Escort Solo Cordless radar detector with a measured emission field strength of 19,769 μ V/m at 3 meters, or 31.9 dB over the Part 15 limit for the 11.7-12.2 GHz band (500 μ V/m).⁸⁰ This level of emissions that caused harmful interference is consistent with the emission levels that RadioShack claim its products produce---27.9 to 37 dB over the Part 15 limit.⁸¹

RadioShack mischaracterizes the concerns of the satellite industry when RadioShack claims that the satellite industry is primarily concerned about interference from *new* radar detectors,⁸² and attempts to distance itself from that problem. As the SIA has previously explained, satellite users have experienced interference from radar detectors well before the introduction of models that sweep above the 11.9 GHz band.⁸³ In fact, the Escort Solo Cordless model that caused the harmful interference described above sweeps only in the 11.7-11.9 GHz band.⁸⁴ Thus, there is no basis for RadioShack to claim that its radar detectors are not likely to be a problem because they do not sweep across the entire 11.7-12.2 GHz band.⁸⁵

RadioShack attempts to downplay the potential harm of its radar detectors by asserting that it has not received any complaints of interference.⁸⁶ However, the Commission acknowledged in the *First Report and Order* that, due to the nature of radar detector use,

⁸⁰ Data provided by Hughes Network Systems, Inc.

⁸¹ *Waiver Request* at 12. *See supra* n. 79, regarding whether RadioShack's values are expressed in the correct units, and whether they understate the levels of emissions when expressed as microvolts/meter measured at 3 meters.

⁸² *Waiver Request* at 12-13.

⁸³ SIA *ex parte* submission filed in ET Docket No. 01-278 on August 19, 2002 at 2.

⁸⁴ *See id.* at attachment, "Summary of Radar Detector Emission Measurements."

⁸⁵ *Waiver Request* at 12-13

⁸⁶ *Waiver Request* at 11-12.

offending radar detectors cannot easily be traced and identified.⁸⁷ Thus it simply is not indicative of the interference potential of RadioShack radar detectors that (i) RadioShack radar detectors may not have not been identified specifically as sources of interference,⁸⁸ or (ii) RadioShack may not have received complaints of interference.⁸⁹ Given the demonstration of harmful interference caused by radar detectors emitting at levels similar to RadioShack's devices, it appears that RadioShack has simply been fortunate that no one yet has specifically identified the operation of its radar detectors as a source of harmful interference.

V. COMMISSION PRECEDENT SUPPORTS THE CURRENT COMPLIANCE SCHEDULE

Just this May, the Commission adopted a Report and Order imposing new emission limits on handheld and other mobile terminals used in the provision of Mobile Satellite Service (MSS), including a compliance deadline similar to the marketing deadline set in this case.⁹⁰ Those emissions limits were imposed to prevent MSS terminals from generating harmful interference.⁹¹ Because of the uncertainty surrounding the issue, the Commission acknowledged that many MSS providers had grappled for years with the problem of designing handsets without knowing what limits ultimately would be adopted.⁹² MSS interests argued that this uncertainty

⁸⁷ *First Report and Order* at ¶ 11.

⁸⁸ *Waiver Request* at 11.

⁸⁹ *Waiver Request* at 11-12.

⁹⁰ *In re Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements and Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emission Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, FCC 02-134, Report and Order and Further Notice of Proposed Rulemaking, 17 FCC Rcd 8903 (2002) ("MSS Emissions Limit Order").

⁹¹ *Id.* ¶¶ 1, 15.

⁹² *Id.* ¶ 16.

threatened system development and discouraged investment in MSS systems.⁹³ Balancing the need to prevent interference with the asserted harm to MSS interests, the Commission decided that: (i) MSS terminals brought into service commencing *as soon as 68 days after the adoption of the Order* (on or after July 21, 2002) would have to comply with new technical limits,⁹⁴ and that non-compliant MSS terminals already in service could not be operated beyond January 1, 2005.⁹⁵

RadioShack does not discuss this recent case, even though the result is fully consistent with the Commission's action in this case. In fact, the *MSS Emissions Limit Order* is on all fours with the instant case: (i) it involved an emissions limit imposed to prevent harmful interference, (ii) it involved the regulation of "consumer devices" (many MSS providers market MSS handheld devices as substitutes for cellular or PCS phones), (iii) it involved a balance between the need to prevent interference and the disruption imposed on MSS terminals already on the market that had been manufactured in accordance with applicable rules, and (iv) it set a compliance deadline effective 68 days after the release of the Order (in this case, the September 27 compliance deadline is 70 days after the release of the Order).

The existence of the *MSS Emissions Limit Order* is a sufficient rebuttal to RadioShack's claim that the Commission September 27 compliance deadline is inconsistent with Commission's precedent regarding application of new rules to a consumer product already on the

⁹³ See *id.* ¶¶ 7-9, 15.

⁹⁴ *Id.* ¶ 41.

⁹⁵ *Id.* ¶ 27.

market.⁹⁶ However, the cases cited by RadioShack are also readily distinguishable from the case at hand.⁹⁷

The situation at hand is first distinguished by the fact that the harm caused by radar detector interference is unprecedented. In none of the cases cited by RadioShack did the Commission identify emissions at levels that were significantly in excess of Part 15 limits. As noted in the *First Report and Order*, emissions from non-compliant radar detectors are up to 200 times greater than the Part 15 limits for unlicensed *transmitters* that operate above 960 MHz.⁹⁸ As discussed above, RadioShack's radar detectors also emit well over the Part 15 limit.⁹⁹

Another important distinction is that, in the cases cited by RadioShack, manufacturers and retailers submitted comments into the record on the subject of the compliance schedule. In RadioShack's own words, in these other cases, "the Commission explicitly considered transition issues expressed by manufacturers and retailers."¹⁰⁰ Here, the Commission cannot be faulted for not considering information that RadioShack and other retailers failed to provide in response to the Commission's express request for information.¹⁰¹

⁹⁶ *Waiver Request* at 13-15.

⁹⁷ RadioShack cites the following: *Revision of Part 15 to Extend the Receiver Certification Program to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 FCC 2d 687, 693 (1976), clarified by 62 FCC 2d 623 (1976); *Amendment of Part 15 to Redefine and Clarify the Rules Governing Restricted Radiation Devices and Low Power Communication Devices*, 79 FCC 2d 67, 90 (1980), modifying 79 FCC 2d 28, 56 (1979); *Amendments of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), recon. denied, 9 FCC Rcd 3386 (1994); *Amendment of Parts 2 and 15 to Further Ensure that Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), recon. on other grounds, 16 FCC Rcd 11373 (2001).

⁹⁸ See *First Report and Order* at ¶ 10.

⁹⁹ See *supra* Section IV.

¹⁰⁰ *Waiver Request* at 15.

¹⁰¹ See *supra* Section II; *Notice of Proposed Rule Making and Order* in ET Docket No. 01-278, 16 FCC Rcd 18205 ¶ 14 (2001).

Moreover, in all cases cited by RadioShack, the interfering devices had to be redesigned and manufactured in a manner not contemplated before. The Commission's implementation of a short compliance timeframe in the case of radar detectors is justified because the radar detector industry has previously manufactured radar detectors that did not sweep into the 11.7-12.2 GHz band.¹⁰² The radar industry not only knows how to design and manufacture a Part-15-compliant radar detector, by RADAR's own assertion, its members manufactured compliant radar detectors at a 73% rate prior to the Commission's decision,¹⁰³ and manufacture compliant radar detectors at an 80% rate as of August 2002.¹⁰⁴ Thus, it is reasonable for the Commission to consider that retail distribution compliance would be easier in this case than in other rule transition cases: (i) given the lack of interest in this proceeding by retailers (including RadioShack), and (ii) given the large percentage of compliant devices already being manufactured. Thus, the compliance deadlines adopted in the *First Report and Order* are appropriate under the circumstances, and the burden on retailers is appropriate given the serious harm caused by non-compliant radar detectors.

Finally, in the *First Report and Order*, the Commission expressly cited the harm to numerous small business caused by radar detector interference.¹⁰⁵ In the case of interference from CB radios, CB radios were found to cause interference only into certain land mobile communications in the 30 MHz band.¹⁰⁶ Nor in the CB radio case did the Commission identify

¹⁰² *First Report and Order* at ¶ 3.

¹⁰³ RADAR *ex parte* submission filed in ET Docket No. 01-278 on June 11, 2002.

¹⁰⁴ RADAR *ex parte* submission filed in ET Docket No. 01-278 on August 12, 2002.

¹⁰⁵ *First Report and Order* at ¶ 10.

¹⁰⁶ *See Revision of Part 15 to Extend the Receiver Certification Program to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 FCC 2d 687 (1976), *clarified by* 62 FCC 2d 623 (1976).

the far reaching economic effects of interference into thousands of businesses nationwide caused by radar detector interference into satellite operations.¹⁰⁷ The Commission's prompt application of its new rules regulating radar detectors is reasonable given the magnitude of the harm caused by the interference generated by non-compliant radar detectors.

For these reasons, the Commission's implementation schedule for compliance with its rules regulating the sale and other marketing of radar detectors is reasonable and justified given the circumstances in this proceeding and the nature of radar detector interference.

VI. CONCLUSION

For six main reasons, the Commission should dismiss or deny RadioShack's waiver request and thereby affirm the application *to all retailers and other marketers* of the prohibition on marketing non-compliant radar detectors after September 27, 2002.

First, holding the Commission's new rule in abeyance so RadioShack can continue selling non-compliant radar detectors would reward a company who did not participate earlier in this proceeding, and who has offered no reason whatsoever for sleeping on its rights.

Second, RadioShack has not identified any special circumstances that warrant relief.

Third, the uncontested record evidence of the long-term harm that the continued operation of non-compliant radar detectors causes to users and providers of satellite services far outweighs the short-term costs associated with requiring that RadioShack comply with the same new rules to which everyone else is subject.

¹⁰⁷ See SIA *ex parte* submission filed in ET Docket No. 01-278 on August 22, 2002; *First Report and Order* at ¶¶ 10-11.

Fourth, grant of the *Waiver Request* would undermine the purpose of the rule that the Commission just adopted and would open the floodgates to claims for similar relief by other entities.

Fifth, each radar detector for which RadioShack seeks relief produces emissions well in excess of the level permitted by Part 15, and well above a level that has been shown to cause harmful interference into satellite services.

Sixth, the compliance schedule that the Commission has adopted in this case is warranted by the harmful interference created by non-compliant radar detectors and is consistent with the relief the Commission has provided in a similar case.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

By: /s/ Richard Dalbello
Richard DalBello
President
SATELLITE INDUSTRY ASSOCIATION
225 Reinekers Lane
Suite 600
Alexandria, VA 22314
(703) 739-8357

August 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of August, 2002, caused a true copy of the foregoing “Opposition of Satellite Industry Association to Petition for Waiver on Behalf of RadioShack” to be hand-delivered to the following:

Joe D. Edge
Tina M. Pidgeon
Jennifer L. Blum
Drinker Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005
Attorneys for RadioShack Corporation

/s/ Elizabeth R. Park
Elizabeth R. Park